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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,487	02/13/2002	Leonard G. Rosenfeld	PPC-824	8776

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EXAMINER

STEPHENS, JACQUELINE F

ART UNIT PAPER NUMBER

3761

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/075,487

Applicant(s)

ROSENFELD, LEONARD G. 

Examiner

Jacqueline F Stephens

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on ____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). ____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other:

DETAILED ACTION

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-10 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claim 1 recites the negative limitation "does not exceed 30 mm" without having basis in the original disclosure for the negative limitation. Therefore, the claim does not comply with the written description requirement. See MPEP 2173.05 (i). Any negative limitation or exclusionary proviso must have basis in the original disclosure. See *Ex parte Grasselli*, 231 USPQ 393 (Bd. App. 1983), *aff'd mem.*, 738 F.2d 453 (Fed. Cir. 1984). The mere absence of a positive recitation is not basis for an exclusion. See MPEP § 2163 - § 2163.07(b) for a discussion of the written description requirement of 35 U.S.C. 112, first paragraph.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

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(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 1-5, and 7-10 are rejected under 35 U.S.C. 102(a) as being anticipated by Persson WO 00/72790.

As to claims 1-5, Persson discloses a sanitary napkin adapted to be worn in a thong undergarment comprising a central absorbent pad having a liquid-pervious cover layer 22, a liquid-impervious barrier layer 24, and an absorbent core 30 between the cover layer and barrier layer (Figure 2). The napkin has a pair of opposite longitudinal side edges 2, 4 defining there between a width dimension. The napkin further comprises a first transverse end 8 and an opposite second transverse end 6 defining there between a length dimension (Figure 1).

The napkin has a longitudinal centerline 14, a lateral centerline 16, a first distal end region 12, and a second distal end region 10 (Figure 1). The napkin has a flap 66, 68 extending laterally outward from each longitudinal side edge in the central region along a line of juncture (Figure 14). The line of juncture defining the length of the central region (Figure 14). Each flap being adapted to fold over a crotch portion of the thong undergarment in use (Figure 14).

The width of the absorbent core varies along at least a portion of the length of the absorbent core such that the width of the absorbent core in the second distal end region 10 has a maximum value that is greater than a maximum value of the width of the absorbent core in the first distal end region 12 (Figures 1 and 14, Abstract, and Page 3, lines 25-28).

The absorbent core in the first distal end region 12 having a length measured intermediate the central region and the first transverse end (Figure 14), wherein the maximum value of the width of the absorbent core in the first distal end region does not exceed 40 mm along any portion of the length of the first distal end region (page 6, lines 7-10). The width of the absorbent core in the first distal end region does not exceed 30 mm along at least one half of the length of the first distal end region (page 3, lines 25-27). Persson discloses a length of the first distal end region 12 in the range of 30-90 mm and a width in the range of 18 to 30 mm (page 3, lines 25-27). Taking a length within that range, such as 40, the ratio of the length to the maximum width of the absorbent core in the first distal end region is less than 2, less than 1.5, and less than 1.25.

As to claim 7, Persson discloses each side flap has an adhesive attachment means 34 on a garment faceable side (page 13, lines 20-22).

As to claim 8, Persson discloses the opposite side edges 2, 4 of the absorbent core converge towards the longitudinal centerline as they extend from the central region toward the first distal end 8 of the sanitary napkin (Figures 1 and 14).

As to claim 9, Persson discloses the sanitary napkin is provided with two flaps 66, 68 on each longitudinal side edge. One flap 66 extends from the central region of the sanitary napkin and a second flap 68 extends from the first distal end region 12 of the sanitary napkin (Figure 14).

As to claim 10, Persson discloses the longitudinal side edges of the absorbent core extend obliquely with respect to the longitudinal centerline in the first distal end

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region, the width of the absorbent core tapering from the central region to the first transverse end 8 (Figure 14).

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Persson.

Persson discloses the present invention substantially as claimed. However, Persson does not disclose the width of the second distal end region has a maximum value of 70 mm. Persson teaches only the end portion intended to be placed rearwards on the user and fit in the narrow part of the thong ahs to be structured with a maximum width.

Persson, therefore, recognizes the width of the second distal end region can be varied and structured more freely. Although Persson does not give the claimed maximum width in the second distal region, the applicant fails to disclose that the 70mm width is such a critical value or gives unexpected results so to exclude the 40 mm width of Persson. In the absence of any new or unexpected results, discovering the optimum or workable ranges involves only routine skill in the art.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jacqueline F Stephens whose telephone number is (703) 308-8320. The examiner can normally be reached on Monday-Friday 9:00-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Weilun Lo can be reached on (703)308-1957. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0858.

Jacqueline F Stephens
Examiner
Art Unit 3761



DENNIS RUHL
PRIMARY EXAMINER

December 1, 2002